# Illinois Department of Revenue Regulations

Title 86 Part 100 Section 100.2230 Net Operating Losses Occurring Prior to 12/31/86 of Unitary Business Groups (IITA Sec 202) - Carrybacks and Carryforwards

TITLE 86: REVENUE

## PART 100 INCOME TAX

Section 100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) - Carrybacks and Carryforwards

a) The Illinois income tax treatment of net operating loss carrybacks and carryforwards will generally follow that of the Internal Revenue Code. However, to the extent that a federal net operating loss for Illinois income tax purposes of a member is absorbed in the computation of combined federal taxable income in the year that it arose, no carryback or carryforward of that loss will be allowed. This prohibition is mandated by IITA Section 203(g) which precludes deducting the same item more than once.

EXAMPLE: Corporations A, B, C and D are members of a unitary business group for calendar year 1982. In that year, Corporations A, B and C had federal taxable incomes for Illinois income tax purposes of \$200,000, \$300,000 and \$500,000, respectively, while Corporation D had a federal net operating loss for Illinois income tax purposes of \$250,000. Since Corporation D's 1982 federal net operating loss for Illinois income tax purposes is used to offset the 1982 federal taxable incomes for Illinois income tax purposes of the other group members in the computation of 1982 combined federal taxable income. Corporation D will not be able to carry back to 1979 or carry forward to 1983 or later years any portion of its 1982 federal net operating loss for Illinois income tax purposes. In these circumstances, Corporation D would not be entitled to a refund of 1979 Illinois income tax based on a net operating loss carryback from 1982 even if it received a refund of its 1979 federal income tax on that basis. Corporation D carried forward the 1982 net operating loss to 1983 or later years in computing federal taxable income for federal income tax purposes, it is obligated to adjust that figure upward by those carryforward amounts in calculating its federal taxable income for Illinois income tax purposes for those carryforward years.

b) In the event that the group members' federal taxable incomes for Illinois income tax purposes and federal net operating losses for Illinois income tax purposes result in a combined federal net operating loss, this loss will be divided among those group members which incur federal net operating losses for Illinois income tax purposes. This division will be made pro rata based on the relative size of the federal net operating losses for Illinois income tax purposes of the members having such losses. The members will then individually carryback or carryforward their respective shares of the combined federal net operating loss in conformity with the applicable provisions of 26 U.S.C. Section 172, i.e. generally 3 year carryback and 15 year carryforward; for

financial institutions, 10 year carryback and a 5 year carryforward; for real estate investment trusts, no carryback and a 15 year carryforward, etc. However, the amount of the loss that the individual member (hereinafter sometimes referred to as the "loss member") can carryback or forward to any year shall be limited to the lesser of the following amounts computed with respect to the carryback or carryforward year.

- (hereinafter sometimes referred to as Limitation No. 1) The sum of the federal taxable incomes and federal net operating losses for Illinois income tax purposes in that year for the loss member and any other person that was a member of the same unitary business group as the loss member in that year and in the year that the loss was incurred by the loss member.
- (hereinafter sometimes referred to as Limitation No. 2) The combined federal taxable income for that year of any unitary business group to which the loss member belonged.
- c) This means that a member of a unitary business group will not be permitted to carry a loss to a year in which it belonged to a unitary business group that had a combined federal net operating loss for Illinois income tax purposes or zero combined federal taxable income for Illinois income tax purposes. In addition, a member of a unitary business group will not be permitted to carry a loss to a year in which it and other common members -- persons that were members of its unitary business group in both the loss year and the carryback or carryforward year -- had an aggregate federal net operating loss or zero taxable income among themselves for Illinois income tax purposes. In the case of losses arising in non-unitary years (years in which a unitary return was not filed), members will be permitted to carry such non-unitary losses to their unitary years (other conditions being met), but the maximum amount of non-unitary loss that any member may carry to a unitary year shall be limited to that member's federal taxable income for Illinois income tax purposes in that year (Limitation No. 1), and by the combined federal taxable income for that year of the unitary group to which the member belongs (Limitation No. 2) whichever is less.
- d) When two or more persons carry losses back or forward to the same taxable year and both (all) were members of the same unitary business group in the carryback or carryforward year, the limitations described in the previous paragraph subsection will be applied as follows. First, if the persons were both subject to Limitation No. 1 relative to the same common members in the carryback or carryforward year and if their losses, when added together, exceed Limitation No. 1, then each of the persons is deemed to have used a proportionate share of its loss in the carryback or carryforward year, based on the size of its loss as compared to the total of the losses of the persons subject to the same Limitation No. 1. Second, if the total combined loss of the persons, otherwise eligible to be used in the carryback or carryforward year, exceeds Limitation No. 2, each of the persons is deemed to have used a proportionate share of its loss, based on the size of its loss, otherwise eligible for use, as compared to the total combined loss of the persons, otherwise eligible for use. (See Examples 4 and 5 below.)
- e) When losses are carried back or forward from two or more loss years against the combined federal taxable income of a unitary business group for a particular taxable year, losses originating in the earliest year shall be used first. Appropriate adjustments

shall be made to Limitation No. 1 and Limitation No. 2 in determining the amounts of losses that may be used in that particular year from later loss years.

# 1) EXAMPLE 1:

# A) FACTS:

i) In 1983, Corporations X, Y, Z, and Q are members of a unitary business group with federal taxable incomes (NOL) for Illinois tax purposes as follows:

Corporation X \$10 million Corporation Y \$10 million Corporation Z \$10 million Corporation Q(\$40 million)

- ii) As a consequence, there is a \$10 million unabsorbed net operating loss originating in 1983.
- iii) In 1980, Corporations X, Y, Z, Q, and R were members of a unitary business group with federal taxable incomes (NOL) for Illinois income tax purposes as follows:

Corporation R \$10 million Corporation Z(\$5 million) Corporation Y(\$5 million) Corporation Q \$10 million Corporation X(\$5 million)

- iv) As a consequence, the unitary business group X, Y, Z, Q and R had a combined federal taxable income in 1980 of \$5 million.
- B) ANALYSIS AND CONCLUSION: As a result of Limitation No. 1, the \$10 million unabsorbed loss of Corporation Q, originating in 1983, cannot be used to any extent in computing the liabilities of Corporations Q, X, Y, Z, or R for 1980. The entire \$10 million unabsorbed loss of Corporation Q originating in 1983 may be tested against 1981 income and loss figures of Corporation Q and other members of its unitary business group in that year.

# 2) EXAMPLE 2:

#### A) FACTS:

i) Corporations A, B, C, D and E are members of a unitary business group in 1981, 1982, and 1983. In 1983, they have federal taxable incomes (NOL) for Illinois income tax purposes as follows:

Corporation A\$ 30,000 Corporation B\$ 60,000 Corporation C\$ 70,000 Corporation D(\$150,000) Corporation E(\$ 50,000)

ii) The group's combined federal net operating loss is (\$40,000) which will be divided between Corporations D and E for purposes of carryback and carryforward:

Corp. D:  $$150,000/$200,000 \times ($40,000) = ($10,000)$ Corp. E:  $$50,000/$200,000 \times ($40,000) = ($10,000)$ 

iii) In 1980 Corporations A, D, E and F were members of a unitary business group with federal taxable incomes (NOL) for Illinois income tax purposes as follows:

Corporation A \$6,000 Corporation D \$7,000 Corporation E \$7,000 Corporation F \$30,000

- iv) As a consequence, the unitary business group A, D, E, and F had combined federal taxable income for 1980 of \$50,000.
- B) ANALYSIS AND CONCLUSION: Under Limitation No. 1, no more than \$20,000 of the net operating loss of Corporations D and E originating in 1983 may be used in computing 1980 liabilities. Of the \$20,000 in 1983 net operating losses that may be used in 1980, Corporation D is deemed to have provided \$15,000 and Corporation E is deemed to have provided \$5,000, this being the ratio indicated by the relative amounts of their respective net operating losses originating in 1983. As a consequence, Corporation D will have an unabsorbed loss of \$15,000, which it may test against its income figures and those of other members of its unitary business group for 1981; Corporation E will have the same opportunity with respect to its \$5,000 of unabsorbed loss.

# 3) EXAMPLE 3:

- A) Same facts as Example 2, except Corporation F had a \$25,000 net operating loss in 1982 and Corporation E had a \$3,000 net operating loss in 1982. Neither Corporations F nor E were members of unitary business groups in 1982; both had zero taxable income in 1979, and neither was a member of a unitary business group in 1979.
- B) ANALYSIS AND CONCLUSION: The entire \$25,000 net operating loss of Corporation F originating in 1982 may be used in computing the liabilities of all four members of the unitary business groups for 1980. Also, the entire \$3,000 net operating loss of Corporation E originating in 1982 may be used in computing the 1980 liabilities of all four members of the unitary business group. As a result of the application of Corporation E's 1982 net operating loss to the group's income in 1980, Limitation No. 1, as it

applies to the net operating losses of Corporations D and E originating in 1983 is \$17,000, i.e., the 1980 federal taxable income for Illinois income tax purposes less absorption of the 1982 loss for Corporation A is \$6,000, for Corporation D is \$7,000, for Corporation E is \$4,000. The \$17,000 of 1983 net operating loss will be divided between Corporations D and E in accordance with the 3 to 1 ratio in which they incurred losses in 1983, with the result that \$12,750 of Corporation D's 1983 net operating loss will be used in 1980 and \$4,250 of Corporation E's net operating loss will be used in 1980 with the remaining unabsorbed amounts potentially available for application to 1981 and later years.

## 4) EXAMPLE 4:

# A) FACTS:

i) Corporations A, B, C and D are members of a unitary business group in 1983. In that year, they have federal taxable income (NOL) for Illinois income tax purposes as follows:

A - \$ 20,000

B - \$ 40,000

C - \$ 40,000

D - (\$150,000)

- ii) As a consequence, there is a \$50,000 unabsorbed loss for Corporation D originating in 1983.
- iii) Corporations W, X, Y and Z are members of a different unitary business group in 1983 and have the following amounts of federal taxable income (NOL) for Illinois income tax purposes in that year.

W - \$ 20,000

X - \$40,000

Y - \$ 40,000

Z - (\$150,000)

- iv) As a consequence, there is a \$50,000 unabsorbed loss for Corporation Z originating in 1983.
- v) In 1980 Corporations A, B, C, D, V, X, Y and Z were all members of the same unitary business group with the following amounts of federal taxable income (NOL) for Illinois income tax purposes.

A - \$10,000

B - \$10,000

C - \$10,000

D - \$5.000

V - (\$40,000)

X - \$15,000

Y - \$15,000

vi) As a consequence, the combined federal taxable income of the unitary business group, A, B, C, D, V, X, Y and Z in 1980 was \$40,000.

#### B) ANALYSIS AND CONCLUSION:

- Limitation No. 2 against which the loss carrybacks relating to both Corporations D and Z must be tested is \$40,000. Limitation No. 1 for the loss carryback of Corporation D is \$35,000 (the 1980 federal taxable incomes for Illinois income tax purposes of Corporations A, B, C and D) and Limitation No. 1 for the loss carryback of Corporation Z is \$45,000 (the 1980 federal taxable incomes for Illinois income tax purposes of Corporations X, Y and Z). Even though Corporations D and Z had identical \$50,000 unabsorbed net operating losses originating in 1983, different amounts of those losses will be absorbed in 1980. In D's case, \$17,500 will be absorbed in 1980, computed as follows:
- ii) Corp. D's Limitation No. 1 for 1980/Limitation No. 2 x Combined Limitation No. 1 for 1980 of corporations D and Z

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35,000/80,000 \times 40,000 = 17,500
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- iii) and \$32,500 will be available for use in other years. In Z's case \$22,500 will be absorbed in 1980, computed as follows:
- iv) Corp. Z's Limitation No. 1 for 1980/Limitation No. 2 x Combined Limitation No. 1 for 1980 of Corporations Z and D

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45,000/80,000 \times 40,000 = 22,500
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and \$27,500 will available for use in future years.

#### 5) EXAMPLE 5:

#### A) FACTS:

i) Corporations A, B, C and D are members of a unitary business group in 1983. In that year, they have federal taxable income (NOL) for Illinois income tax purposes as follows:

Corporation A - \$ 20,000 Corporation B - \$ 40,000 Corporation C - \$ 40,000 Corporation D - (\$150,000)

ii) As a consequence, there is a \$50,000 unabsorbed loss for Corporation D originating in 1983. Corporations W, X, Y and Z are

members of a different unitary business group in 1983 and have the following amounts of federal taxable income (NOL) for Illinois income tax purposes in that year:

Corporation W - \$20,000 Corporation X - \$10,000 Corporation Y - \$30,000 Corporation Z - (\$140,000)

iii) As a consequence, there is an \$80,000 unabsorbed loss for Corporation Z originating in 1983. In 1980, Corporations A, B, C, D, V, X, Y and Z were all members of the same unitary business group with the following amounts of federal taxable income (NOL) for Illinois income tax purposes:

Corporation A - \$10,000 Corporation B - \$10,000 Corporation C - \$10,000 Corporation D - (\$5,000) Corporation V - (\$25,000) Corporation X - \$50,000 Corporation Y - \$10,000 Corporation Z - (\$30,000)

iv) As a consequence, the combined federal taxable income of the unitary business group A, B, C, D, V, X, Y and Z in 1980 was \$30,000.

#### B) ANALYSIS AND CONCLUSION:

- i) Limitation No. 2 against which the loss carrybacks relating to both Corporations D and Z must be tested is \$30,000. Limitation No. 1 for the loss carryback of Corporation D is \$25,000 (the 1980 federal taxable incomes and net operating losses for Illinois income tax purposes of Corporations A, B, C and D). Limitations No. 1 for the loss carryback of Corporation Z is \$30,000 (the 1980 federal taxable incomes and net operating losses for Illinois income tax purposes of Corporations X, Y and Z).
- ii) Corporation D will be deemed to have used \$13,636 of its net operating loss in 1980, computed as follows:

Corp. D's Limitation No. 1/Limitation No. 1 of Corps. D and Z x Limitation No. 2

25,000/55,000 x 30,000

iii) and \$36,364 will be available for use in other years. Corporation Z will be deemed to have used \$16,364 of its net operating loss in 1980 computed as follows:

Corp. Z's Limitation No. 1/Limitation No. 1 of Corps. Z and D x Limitation No. 2

30,000/55,000 x 30,000

- iv) and will have \$63,636 of its net operating loss available for use in future years.
- f) Application of the loss in the carryback and/or carryforward year.
  - 1) Limitations Nos. 1 and 2 do not obviate the necessity for determining the amount of federal taxable income remaining to each group member in the carryback or carryforward year after application of the loss. This computation is necessary so that the limitation on loss carried from other years can be determined.
  - When the total loss allowed to be carried back or forward is less than the total federal taxable income of the common group members in the carryback or carryforward year, each loss member's share of the total loss shall be used first to offset its own income in the carryback or carryforward year. Any remaining loss (up to the limitation) shall be attributed to each of the common members having federal taxable income in the carry over year pro rata based on each member's income over the total income of the common group members.

## 3) EXAMPLE:

## A) FACTS:

i) In 1983, Corporations A, B, C, D and G are members of the unitary business group with federal taxable incomes (NOL) for Illinois income tax purposes as follows:

Corporation A - (\$10,000) Corporation B - \$30,000 Corporation C - \$5,000 Corporation D - (\$60,000) Corporation G - \$5,000

ii) As a consequence, there is a \$30,000 unabsorbed net operating loss originating in 1983 which will be divided between Corporation A and Corporation D for carryback or carryforward purposes as follows:

Corp. A:  $$10,000/$70,000 \times ($30,000) = ($4,286)$ Corp. D:  $$60,000/$70,000 \times ($30,000) = ($25,714)$ 

iii) In 1980, Corporations A, B, D and F were members of a unitary business group with federal taxable incomes (NOL) for Illinois income tax purposes as follows:

Corporation A - \$15,000 Corporation B - \$10,000 Corporation D - \$16,000 Corporation F - \$20,000

iv) As a consequence, the unitary business group A, B, D and F had combined federal taxable income for 1980 of \$61,000.

#### B) ANALYSIS AND CONCLUSION:

- i) As a result of the Limitation No. 1, Corporation A and Corporation D can carryback the entire amount of unabsorbed federal net operating loss originating in 1983 to offset their 1980 income as well as the 1980 income of the other common group member, Corporation B. After application of this 1983 carryback, the unitary business group consisting of Corporations A, B, D and F will have a combined federal taxable income in 1980 of \$31,000, i.e., the original 1980 combined federal taxable income of \$61,000 less the loss carried back from 1983 to \$30,000.
- ii) The \$30,000 loss carried back from 1983 will be attributed to each of the common group members in 1980 in the following manner. Corporation D will use \$16,000 of the \$25,714 1983 unabsorbed loss assigned to it to reduce its 1980 federal taxable income to zero. Corporation A will use the entire amount of its 1983 loss of \$4,286 against its 1980 federal taxable income of \$15,000 resulting in a balance of \$10,714. Corporation A and Corporation B will share D's remaining loss between them based on their income in 1980. Thus, Corporation A will be allowed to use \$5,828 of Corporation D's remaining loss, resulting in a balance of federal taxable income in 1980 of \$4,886. Corporation B will be allowed to use \$3,886 of Corporation D's remaining loss against its 1980 federal taxable income of \$10,000, resulting in a balance of federal taxable income in 1980 of \$6,114.
- iii) Corporation A and Corporation's B share of Corporation D's remaining loss carryback from 1983 is computed as follows:

Corp. A:  $$15,000/$25,000 \times ($9,714) = ($5,828)$ Corp. B:  $$10,000/$25,000 \times ($9,714) = ($3,886)$ 

g) A further additional complication arises where a member of a unitary business group filing an Illinois income tax return is also a member of an affiliated group filing a consolidated return for federal income purposes. In any such case, the member having a federal net operating loss for Illinois income tax purposes which contributes to the combined federal net operating loss will be required to carry forward (may not carryback) its pro rata share of that combined net operating loss (see IITA Section 203(e)(2)(E)).

h) A schedule shall be attached to the pro forma U.S. 1120 showing the computation of the amount of the carryforward and its derivation, i.e., original federal net operating loss for Illinois income tax purposes less amounts absorbed in the loss year and in previous carryforward years. The taxpayer shall also provide any other documentation required by the Department to support the amount of the carryforward. As indicated with respect to carrybacks, per Limitation No. 1 and Limitation No. 2, the maximum amount of pro rata share of combined federal net operating loss that can be individually carried forward to any year by a member shall be limited to the lesser of the aggregate total of federal taxable incomes and federal net operating losses for Illinois income tax purposes of the loss member and other common members of the unitary business group in the carryforward year or the entire unitary business group's combined federal taxable income in the carryforward year. This means that a member of a unitary business group will not be permitted to carry a loss forward to a year in which the group's combined federal taxable income (without the loss carryforward) is already zero or less nor may it carry a loss forward to a year in which the group had combined federal taxable income if its federal taxable income or federal net operating loss for Illinois income tax purposes in the carryforward year, when added to comparable figures for other common members, did not exceed zero. Unabsorbed losses may be saved for use as appropriate in future years up to the maximum number of years permitted under IRC Section 172.

# 1) EXAMPLE 1:

## A) FACTS:

i) In 1983, Corporations A, B, C and D are members of a unitary business group with federal taxable incomes (NOL) for Illinois income tax purposes as follows:

Corporation A - \$100,000 Corporation B - 40,000 Corporation C - 40,000 Corporation D - (200,000)

- ii) As a consequence, there is a \$20,000 unabsorbed loss for Corporation D originating in 1983. All four corporations are members of an affiliated group filing a consolidated federal income tax return for 1983.
- iii) In 1984, Corporation D is an unaffiliated corporation filing an unconsolidated federal income tax return. In filing its own unconsolidated federal income tax return for 1984, Corporation D reflected a federal taxable income of \$100,000, being \$200,000 taxable income less a federal net operating loss deduction carryforward of \$100,000. Corporation D's federal taxable income for Illinois income tax purposes is \$200,000, computed by adding to its federal taxable income on its unconsolidated federal income tax return of \$100,000 the amount of its net operating loss deduction of \$100,000. In 1984, Corporation D was a member of

the same unitary business group as in 1983, with federal taxable incomes (NOL) for Illinois income tax purposes as follows:

Corporation A - \$ 30,000 Corporation B - 30,000 Corporation C - 30,000 Corporation D - 200,000

- iv) As a consequence, there is a \$290,000 combined federal taxable income for the group for 1984, prior to any net operating loss carryforward under these rules.
- B) ANALYSIS AND CONCLUSION: Because it was a member of an affiliated group filing a consolidated federal income tax return in 1983, Corporation D could not carryback any part of its unabsorbed \$20,000 loss for Illinois income tax purposes. The entire amount of that loss can be carried forward to 1984 to reduce the combined federal taxable income of the unitary business group A, B, C and D to \$270,000, since neither Limitation No. 1 or Limitation No. 2 applies.

## 2) EXAMPLE 2:

A) FACTS: Same facts as Example 6 in subsection (f)(3) above except that in 1984 Corporations A, B, C and D are members of a unitary business group with Corporation E and the five corporations have federal taxable income (NOL) for Illinois income tax purposes as follows:

Corporation A - \$ 40,000 Corporation B - 40,000 Corporation C - 40,000 Corporation D - (130,000) Corporation E - 40,000

B) ANALYSIS AND CONCLUSION: No part of Corporation D's \$20,000 unabsorbed loss originating in 1983 may be used in 1984 since Limitation No. 1 against which this loss must be tested is (\$10,000), the aggregate total of the federal taxable income for Illinois income tax purposes of Corporations A, B and C and the federal Net operating loss for Illinois income tax purposes of Corporation D.

(Source: Amended at 11 III. Reg. 17782, effective October 16, 1987)